

DPS Partnership Ltd – Terms and Conditions

1. INTRODUCTION

- 1.1. These terms and conditions shall apply to any contract between DPS Partnership Ltd HEREIN KNOWN AS "The Company" and the Client, HEREIN KNOWN AS "The Client" which shall mean any person, firm or Company placing any order which is accepted by The Company for the supply of goods (including any instalment or part of them) and/or services (including any part of them) which The Company is to supply or deliver.
- 1.2. The parties agree that these terms and conditions (together with any other terms and conditions expressly incorporated into this contract) represent the entire agreement between the parties relating to the sale or supply of the goods or services and that no statement or representation made by either party has been relied upon by the other in agreeing to enter into this contract.
- 1.3. The Company's employees or agents are not authorised to make any representation concerning the goods or services unless confirmed by an Officer of The Company in writing. In entering into the Contract The Client acknowledges that it does not rely upon any such representation which is not so confirmed.
- 1.4. Any advice or recommendation given by The Company or its employees or agents to The Client or its employees or agents as to supply of the goods or services which is not confirmed in writing by The Company is followed or acted upon entirely at The Client's own risk and The Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 1.5. Quotations issued by The Company are given subject to these Terms and Conditions and are not offers capable of acceptance so as to make a legally binding contract. All orders (by whatever name called) submitted to The Company require The Company's written acceptance before any Contract arises and thereafter incorporate these Terms and Conditions.
- 1.6. These Terms and Conditions exclude any other terms and conditions in any form of contract or order or similar which are inconsistent with these conditions which The Client may seek to impose, even if such purports to exclude or supersede any terms and conditions inconsistent with them. The Client accepts that any goods or service(s) received by him or any contract between The Company and The Client, shall be deemed to be acceptance of these Terms and Conditions.
- 1.7. No order which has been accepted by The Company may be cancelled by The Client except with the Agreement in Writing of The Company and on terms that The Client shall indemnify The Company in full against all loss, costs, damages, charges and expenses incurred by The Company.
- 1.8. The Company reserves the right to delegate or sub-contract any part of the service(s).
- 1.9. Any typographical, clerical or other error or omission in any written or printed document or information issued by The Company shall be subject to correction or alteration at any time without any liability on the part of The Company.
- 1.10. The Client acknowledges; that it purchases the goods or services in a competitive market and that the bargaining strength of The Company was not a relevant factor; that it received no inducement to agree to any term herein; that it knows and understands the existence, extent and meaning of these conditions; that it knows and understands the restriction or exclusion of any rights given to it in this contract or by any of the implied or express conditions and warranties contained in the Supply of goods and services Act 1982 or any other enactment or any other principle in law or equity and that it accepts the restriction or exclusion of those conditions as being fair and reasonable having regard to all the circumstances of the Agreement.

2. SPECIFICATIONS

- 2.1. The quantity, quality and description of and any specification for the goods or services shall be those set out in the Order

Form. All descriptive terms contained in The Company's sales literature and price lists are approximate only and shall not form part of this contract.

- 2.2. The Client shall be responsible to The Company for ensuring the accuracy of the terms of any Order (including any applicable specification), and for giving The Company any necessary information relating to the goods or service(s) and within a sufficient time to enable The Company to perform the Contract in accordance with its terms. The Client is entirely responsible for satisfying itself that all goods and service(s) ordered from or supplied by The Company (including any descriptions, data, advice, recommendations or other information provided by The Company in relation to those goods or service(s)) are entirely suitable for The Client's purposes.
- 2.3. The Company reserves the right at all times to substitute, change, rearrange or alter the configuration of the goods or service(s) provided under this agreement. The Company shall, where possible, use reasonable efforts to give prior written notice to The Client of such substitution change, rearrangement or alteration.
- 2.4. If The Company is to provide a proof of the goods, The Company shall use its best endeavours to ensure that such proof is accurate for content only and such proof shall not be accurate in respect of its colour. The Company shall only provide a proof which is accurate for content and colour if this is an express term of the Contract which is agreed by The Company in writing.

3. SUPPLY OF MATERIALS

- 3.1. The Client shall be responsible for ensuring that the materials supplied by it or on its behalf:
 - 3.1.1. conform to specifications in the quotation and any Royal Mail requirements;
 - 3.1.2. are supplied punctually;
 - 3.1.3. are accompanied by a delivery advice note stating the quantity and description of the materials supplied;
 - 3.1.4. are delivered on pallets, boxed and supplied in such a way as to withstand normal storage and handling;
 - 3.1.5. are sufficient and suitable to enable The Company to deliver the correct quantity of the goods ordered allowing for normal wastage and spoilage.
- 3.2. The Company shall not be responsible for any loss arising from any errors or omissions in the goods supplied. The Company shall not be required to check the contents of any materials supplied by or on behalf of The Client. Where The Company delivers to The Client goods of up to 10% more or less than the amount set out in the order form (in the case of Web printing this shall be 5%), The Client shall not be entitled to object to or reject the goods by reason of the surplus or shortfall.
- 3.3. Any of the Client's materials which remain in The Company's possession after 14 days from the completion of any order will be subject to storage charges payable by The Client. The Company reserves the right to destroy or dispose of all such materials.
- 3.4. Charges for the collection and delivery of the Client's materials is not included within the contract price and if collection or delivery is carried out by The Company on the Client's behalf, The Company shall be entitled to raise an appropriate charge.

4. PROVISION OF COMPUTER DATA

- 4.1. The Client shall ensure that any computer data supplied to The Company is clean, uncorrupted, unadulterated and capable of being read and processed by any normal means and does not contain any viruses, adware, Trojans, or similar.
- 4.2. The Company shall not be liable for the loss or corruption of any of the Client's information or data held on or in any of The Company's equipment, materials, components or software which may be lost or corrupted at any time and The Client accepts responsibility for protecting and/or preparing

a "backup" copy of any such data or information prior to The Company carrying out its functions.

5. PRICE AND PAYMENT

- 5.1. The Price of the goods or service(s) shall be the price on The Company's Order Form. The Client is responsible for all charges including and after the supply of the goods or service. Unless otherwise stated all prices are exclusive of value added tax and any other taxes.
- 5.2. The Client shall pay The Company for the goods or service(s) at the rate and in any manner set out in The Company Order Form unless otherwise agreed in writing. The Client shall pay the price to The Company within thirty (30) days of the date on the relevant invoice rendered by The Company.
- 5.3. If the Client is to pay a deposit, such deposit is to be paid to The Company before The Company undertakes the supply of the goods or services. The sum paid as a deposit shall be deducted from the charges payable by The Client to The Company. The deposit shall not be refundable.
- 5.4. All amounts due to The Company under this Agreement shall be paid by The Client in full (without any set-off, deductions or withholdings whatsoever). Payment(s) made to The Company will be applied to the oldest balance due to The Company at the time of payment.
- 5.5. If The Client fails to make payment in full by the due date then, without prejudice to any other right or remedy available to The Company, The Company shall be entitled to; immediate payment of all invoices rendered by The Company to The Client (whether or not any such invoice has been outstanding for 30 days); cancel the contract (or outstanding part thereof); suspend any further supply of goods or service(s) to The Client; appropriate any payment made by The Client to such of the goods or services (or the goods or services supplied under any other contract between The Client and The Company) as The Company may think fit (notwithstanding any purported appropriation by The Client) and/or charge The Client interest (both before and after any judgment) on the amount unpaid at the rate of eight per cent per annum above Bank of England base rate from time to time. Until payment in full is made, such interest is to accrue on a daily basis. If it be held that The Company is not entitled to rely upon this provision, The Company will rely upon the statutory provision in respect of interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.6. Where The Company undertakes to post the goods, the cost of postage shall be paid by the Client, by telegraphic transfer, no later than 48 hours before any such mailing begins. If the cost of such postage is not so paid, The Company shall have the right to withhold the mailing. Where the final cost of postage is less than the amount paid by telegraphic transfer, The Company shall either refund the sum remaining to the Client or shall provide a credit for the Client for the next such mailing.

6. DELIVERY OF GOODS AND DEFECTS

- 6.1. The time for delivery of goods shall not be of the essence and shall be subject to receipt by The Company of all information, specifications and materials.
- 6.2. At the time of delivery of the goods to the Client, the Client shall be entirely responsible for checking the goods are without defect, fault or impairment.
- 6.3. In the event that the Client becomes aware of any defect, fault or impairment in the goods, the Client must provide written notification of any such defect, fault or impairment to The Company within 2 working days of delivery. The written notification is to include full details of the defect, fault or impairment. The Company, upon receipt of such notice, shall use its best endeavours to resolve the defect, fault or impairment as quickly as is reasonably possible.

7. LIABILITY AND INDEMNITY

- 7.1. The Company's liability to The Client in respect of any direct loss that may be or may have been suffered by The Client in respect of any breach of The Company's contractual, common law or statutory obligations shall be limited to the contract price.

- 7.2. The Company shall not be liable to The Client in respect of any claim for any, indirect or consequential economic or other losses, damages or liabilities such as (without limitation) lost profits, revenue, costs including legal and other professional costs, removal, storage or other expenses, or other claims to any consequential compensation whatsoever, arising from or in connection with any representation or any express or implied warranty, condition or other contract term or any duty at common law or pursuant to statute, which arises out of or in connection with the supply of the goods or service(s) except as expressly provided in these Terms and Conditions even if The Company has been advised of the possibility of such losses.
- 7.3. The Company shall not be liable to The Client or be deemed to be in breach of the Contract or any part thereof or any duty at common law or pursuant to statute or otherwise by reason of any delay in performing or any failure to perform, any of its obligations in relation to the goods and service(s) if the delay or failure was due either directly or indirectly to any cause beyond The Company's reasonable control including but not exclusively; act of God, illness or infirmity, explosion, flood, earthquake, subsidence, tempest, fire or accident; war or threat of war or preparation for war, sabotage, collapse of structure, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measure of any kind on the part of any governmental, parliamentary or local authority, import or export regulation or embargo; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); unexpected difficulties in obtaining raw materials, labour, fuel, parts or equipment; power failure or unforeseeable breakdown in equipment or the act negligence or omission of any relevant Carrier.
- 7.4. The Client agrees to indemnify The Company against all or any loss or damage it may suffer as a result of any act, negligence or omission on the part of The Client its servants or agents whilst using the goods or service(s) that forms the subject matter of this agreement. Such loss or damage to include (without limitation) lost profits, revenue, costs, goodwill or other claims to direct, indirect or consequential economic or other losses of The Company or any other party.
- 7.5. The Client warrants that it shall have at all material times an effective policy of insurance to cover any liability or claim that may arise including but not limited to direct, indirect and consequential losses.
- 7.6. The Company shall not be liable for the loss or corruption of any of The Client's information or data held on or in any of The Company's or The Client's equipment, materials, components or software which may be lost or corrupted at any time, including during The Company's maintenance, repair or upgrading of such equipment, materials, components or software, and The Client accepts responsibility for protecting and/or preparing a "back-up" copy of any such information or data.

8. CODES OF PRACTICE

- 8.1. The Client undertakes to:
 - 8.1.1. provide The Company with true and good copies of all advertising material or other material intended to be enclosed with any goods or materials prepared by The Company;
 - 8.1.2. ensure that all information or materials provided by it comply with all applicable statutory requirements and with the codes of practice of the appropriate supervisory bodies including, but not limited to, the British Codes of Advertising and Sales Promotion (BCASP); and the Direct Marketing Associations Code of Practice;
 - 8.1.3. indemnify The Company against all costs, claims, liabilities, penalties and expenses which The Company may incur by reason of the goods or services being illegal, unlawful, infringing any copyright, trademark or other intellectual or other proprietary rights of any third party or is defamatory, obscene or the distribution of which may infringe postal or other regulations or which is in breach of any trade description or other legislation

- 8.2. The Company shall have the right upon request from the body administering the Quality Standard in Mail Production (QMP) or any successor accreditation scheme, to supply that body with samples or any mailings relating to this contract.

9. TERMINATION

- 9.1. The Company may terminate this Agreement forthwith or withdraw or suspend the supply of the goods or service(s) at any time upon:
- 9.1.1. The Client failing to make payment to The Company in accordance with this agreement;
- 9.1.2. The Client expressly or impliedly repudiating or breaching this agreement by refusing or threatening to refuse to comply with any of the provisions of this agreement;
- 9.1.3. The Client entering in a voluntary arrangement with its creditors, or has or had a petition or an administration order with its creditors presented against it, or becomes subject to an administration order, or becomes insolvent, goes into compulsory or voluntary liquidation or a provisional liquidator or a receiver and/or manager or administrative receiver is appointed, an encumbrancer takes possession of any of the property or assets of The Client or if The Client ceases, or threatens to cease, to carry on any business, fails to or refuses to pay in full any sum due and payable by The Client to The Company on the due date for payment, or The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to The Client.
- 9.2. Any termination shall not relieve The Client of its obligation to pay any charges incurred hereunder prior to such termination. Unless otherwise agreed by The Company The Client shall be liable for all costs and charges incurred by The Company arising from such termination. The Parties' right and obligations which by their nature would extend beyond the termination, cancellation or expiry of this Agreement shall survive such termination, cancellation or expiry.

10. RISK AND TITLE

- 10.1. Risk of damage to or loss of the goods shall pass to The Client at the time when The Company notifies The Client that the goods are available for delivery.
- 10.2. Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the legal and beneficial titles shall not pass to The Client until the company has received, in cash or cleared funds, payment in full of the price of the goods or services and all other goods and services to be sold by The Company to The Client for which payment is then due, together with all other monies payable in relation thereto by The Client to The Company.
- 10.3. Until such time as the property in the goods passes to The Client, the Client shall hold the goods as The Company's fiduciary agent and bailee, and shall keep the goods separate from those of The Client and third parties and properly stored, protected, insured, clearly marked and identified as The Company's property and shall not annex the goods to any premises without The Company's written permission. Should The Company resell or otherwise dispose of the goods but not have accounted to The Company for the price of the goods and all other goods agreed to be sold by The Company to The Client and all other relevant monies, The Client shall keep such proceeds of sale or other monies that are due and payable to The Company in a separate bank account from any other monies or properties of The Client and third parties.
- 10.4. Until such time as the property in the goods passes to The Client the Company shall be entitled at any time to require The Client to deliver up the goods to The Company and shall have irrevocable licence to enter upon the premises of The Client or of any third party where the goods are stored and inspect or repossess the goods. The Client shall in any relevant contract with a third party protect this right of The Client.
- 10.5. The Client shall not be entitled to pledge or in any way charge by way of security or any indebtedness any of goods which remain the property of The Company, but if The Client does so all monies owing by The Client to The Company shall forthwith become due and payable without prejudice to any other right or remedy of The Company.

- 10.6. The Company is entitled to maintain an action or claim for the price of the goods even though the property in them may not have passed to The Client.

11. INSURANCE

- 11.1. Unless otherwise agreed in writing, The Client warrants that it shall have an effective policy of insurance in respect of the goods to their full replacement value and against all other risk and liability (including but not limited to direct, indirect and consequential losses). The Client further warrants that there are no circumstances which could lead to such insurance being revoked, vitiated or not renewed in the ordinary course.

12. MISCELLANEOUS

- 12.1. Each party agrees to maintain in strict confidence all plans, designs, drawings, trade secrets, business and other proprietary information of the other Party which is disclosed pursuant to this Agreement. Neither Party shall disclose to any third party such confidential information without the express written consent of the other. No obligation of confidentiality shall apply to the disclosed information which the recipient;
- 12.1.1. already possessed without obligation of confidentiality; or
- 12.1.2. develops independently; or
- 12.1.3. rightfully receives without obligation of confidentiality from a third party.
- 12.2. Except as expressly provided herein no licence, express or implied, is granted by The Company pursuant to this Agreement.
- 12.3. Neither party may assign this Agreement without the written consent of the other Party (which consent shall not be unreasonably withheld or unduly delayed).
- 12.4. If any dispute arises out of this agreement the financial value of which exceeds the County Court Small Claims upper limit the parties will initially consider the appropriateness of resolving such dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) model mediation procedure in such form as is recommended by CEDR. Any dispute arising under or in connection with these Conditions not so resolved by mediation shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1975.
- 12.5. If any provision of this Agreement is held by a court or any governmental agency or authority to be invalid, void, or unenforceable, the remainder of this Agreement shall nevertheless remain legal, valid and enforceable providing always that if such a provision is of a fundamental nature to this Agreement either party may terminate this Agreement forthwith.
- 12.6. Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right, nor operate so as to bar the exercise or enforcement thereof or to any other right on a later occasion.
- 12.7. Paragraph headings do not form part of this Agreement and shall not be taken into account in the construction of interpretation thereof.
- 12.8. Any notice to be given to The Company shall be in writing.
- 12.9. Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, reenacted or extended at the relevant time.
- 12.10. This Agreement shall be governed and construed in accordance with the laws of England, and the Parties irrevocably agree to the exclusive jurisdiction of the Courts of England.